

**SETTLEMENT AGREEMENT BETWEEN MISSOURI DENTAL BOARD  
AND THOMAS L. ANDERSON, D.D.S.**

Come now Thomas L. Anderson, D.D.S. ("Licensee") and the Missouri Dental Board ("Board") and enter into this settlement agreement for the purpose of resolving the question of whether Licensee's license as a dentist will be subject to discipline.

Pursuant to the terms of § 536.060, RSMo 2000, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri ("AHC") regarding cause to discipline the Licensee's license, and, additionally, the right to a disciplinary hearing before the Board under § 621.110, RSMo<sup>1</sup>.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to present evidence on his own behalf at the hearing; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a disciplinary hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against his license. Being aware of these rights provided him by operation of law, Licensee knowingly and voluntarily waives each and every one of these rights and freely enters into this settlement agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there was cause to discipline his license, along with citations to law and/or regulations the Board believes was violated.

For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this settlement agreement are true and stipulates with the Board that Licensee's license, numbered 014573 is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 332, RSMo.

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<sup>1</sup> All statutory references are to Missouri Revised Statutes 2000, as amended, unless otherwise indicated.

Joint Stipulation of Fact and Conclusions of Law

1. The Missouri Dental Board ("Board") is an agency of the State of Missouri created and established pursuant to § 332.021, RSMo, for the purpose of executing and enforcing the provisions of Chapter 332.

2. Licensee Thomas L. Anderson, D.D.S. is licensed by the Board as a dentist, License No. 014573. Licensee's Missouri license was at all times relevant herein, and is now, current and active.

3. On or about April 23, 2013, the Board received a complaint from J.R. alleging that Licensee's dental assistant diagnosed her and recommended a treatment plan. J.R. also alleged that the dental assistant removed plaque from her teeth. J.R. stated that Licensee's dental assistant recommended J.R. have a filling and crown replaced and that she did not realize the person was a dental assistant and not a hygienist until the end of the appointment.

4. On or about January 21, 2014, the Board received a complaint from S.S., a dental assistant, alleging that while she worked in Licensee's office, she was told to "do several things by herself or with another assistant but without a doctor present." S.S. alleged that she performed patient exams before the dentist saw the patient, charted issues, took x-rays, scaled teeth and used the cavitron. She stated another assistant taught her to use the cavitron. She stated she was always by herself until the cleaning was finished. S.S. stated she packed cord around anterior and posterior teeth with no dentist present and used a high speed hand piece to smooth down an area with only another assistant present. She stated she also assisted dental assistants in permanently cementing inlays and crowns with no dentist present.

5. As a result of the two complaints, the Board initiated an investigation.

6. As part of the Board's investigation, on January 6, 2015, Board Investigator Joshua Fisher travelled to Kansas City to speak with Licensee about the two complaints. Licensee was unaware that Fisher intended to commence the investigation or meet with Licensee at that time. When Fisher arrived, Licensee's staff informed Fisher that Licensee was not practicing that day. Accordingly, Fisher spoke with another dentist in the practice, Dr. Darren Perry, D.D.S. Dr. Perry gave Fisher an overview of the practice, stating that Licensee owns the practice and he and two other dentists are associates. He stated that the dentists rotate between the three practice locations. He stated that there were about nineteen or twenty dental

assistants employed by the practice who also rotated through the three practices. He stated he was not aware of any of the dental assistants having expanded functions permits. He stated there were no dental hygienists employed by the practice. Dr. Perry stated that he allows the assistants to do other duties "depending on their skill level" such as seating patients, taking radiographs, polishing and flossing teeth and providing dental care instructions. As part of the January 6, 2015 visit Fisher also conducted an infection control inspection. During that inspection, Licensee's staff contacted Licensee who then came to the office to speak with Fisher.

7. On January 6, 2015, Fisher spoke with Licensee about the two complaints. Licensee stated he did not recall either complainant. Licensee stated that his assistants "mainly clean operatories after patients and assist him during dental procedures." He stated they also assist with sterilization. He stated that "he does all the polishing and scaling of teeth on his patients." Fisher requested J.R.'s patient record, a list of all current employees, a list of all past employees for the past two years, and copies of any expanded function certificates. Fisher also informed Licensee he would perform a continuing education audit.

8. On or about January 22, 2015, Fisher met with several of Licensee's dental assistants.

- a. Fisher met with dental assistant MV. MV stated she was not an expanded functions dental assistant. She stated her duties in the office were: cleanings, x-rays, charting for the dentist, polishing, flossing and assisting the dentists. She stated sometimes she does sterilization. She stated on one occasion "the dentist left a piece of plaque she noticed while polishing and she used a hand scaler to remove it." She stated she uses the cavitron to remove stains from teeth.
- b. Fisher also met with dental assistant RM. She stated she is not an expanded function dental assistant. She stated her duties include: x-rays, charting, polishing, flossing and assisting the dentist. She stated the dentist does the scaling of teeth but that she has scaled teeth "a few times" if she saw "plaque the dentist missed." She stated she has used the high speed hand piece to trim temporaries but not in a person's mouth.
- c. Fisher met with dental assistant BM. BM stated she is not an expanded functions dental assistant but she does have a nitrous monitoring permit. She stated her duties include:

ordering all the supplies for the three offices, taking impressions and photos, polishing, flossing and patient education. She stated she does scale teeth with her explorer if the dentist missed plaque or tartar. She stated she uses the cavitron for stain removal but not below the gum line. She stated she uses the high speed hand piece on temporaries in a patient's mouth. She stated she "usually mix[es] the material and assists the dentist" with cementing crowns or inlays. She stated with regard to allegations of diagnosis and treatment planning, she will "tell the patient what she sees and what the dentist may recommend but the dentist makes the decision."

- d. Fisher met with dental assistant KM. She stated she is not an expanded function dental assistant. She stated her duties include polishing and flossing as well as assisting the dentists. She stated she has used the scaler "a few times to remove stains or tartar but not often." She stated she uses the cavitron in a patient's mouth to remove stains from teeth but "she's not supposed to." She stated she got in trouble with Licensee once because she adjusted the bite in a patient's mouth with the high speed hand piece. She stated that she removed a piece of cement with the hand piece but Licensee "told her she cannot do that." She stated she will "tell the patient what she sees and what the dentist may recommend but the dentist makes the decision."
- e. Fisher also met with dental assistant KW. She stated she was not an expanded functions dental assistant and that her duties included suctioning, taking x-rays, charting, taking impressions, sterilizing and giving general oral health education. She stated she polishes and flosses teeth but is not allowed to scale teeth. However, she stated she has used a scaler to remove buildup along a wire before but it was not regular procedure. She stated the dentist did not tell her to do it but it made her job a little easier. She stated she will "tell the patient what she sees and what the dentist may recommend but the dentist makes the decision."
- f. Fisher met with dental assistant KB. She stated she is not an expanded functions dental assistant. She stated her job duties include taking x-rays, charting and assisting the dentist.

She stated she is also allowed to polish and floss. She stated she is not allowed to use a hand scaler but that she used one to pick some missed tartar off teeth. She stated the dentist did not know she was using it but she thought it would be easier than calling the dentist back into the room. She stated she did not use the high speed hand piece in a patient's mouth but did use it on dentures.

- g. Finally, Fisher met with dental assistant KH. She stated she had an expanded functions permit for Restorative 1 but that the Board had not issued her a permit yet. She stated she had mailed in her application to the Board office but was "waiting to get it back." Fisher's review of the system did not identify a permit issued to KH. Regarding her duties, KH stated she charts, takes x-rays, assists the dentist, polishes, flosses, gives oral health education and goes over post-op instructions with the patient. She stated she also will place occlusal fillings because she has the expanded functions permit. She stated she is not allowed to scale teeth but she stated she will use the scaler to remove calculus if the dentist misses some. She stated the dentist never told her to do it and she never told the dentist she did it so she was not aware of whether the dentist knew. She stated she used the high speed hand piece to trim temporaries and that she will "tell the patient what she sees and educate them on what the dentist may recommend."

9. On January 29, 2015, Fisher met with Licensee and his attorney. With regard to J.R.'s complaint that the assistant diagnosed and treatment planned as well as removed plaque and cleaned her teeth, Licensee stated that the assistants will "chart, take x-rays, look for cavities, make notes for teeth to look at and pre-chart "as necessary. He stated they did not diagnose patients but may "draw his attention to something." Regarding S.S.'s complaint, Licensee stated that S.S. "left on bad terms and she never really worked under him but floated between dentists." He said S.S. was "let go because she was having issues getting to work on time" and S.S. had only worked for the practice for a short time, approximately two months. Licensee stated that "a few years ago his assistants did scale teeth but he would check their work afterwards." He stated that it was his office policy to "never turn down an emergency patient and with an already full schedule, he could not keep up with it." He stated he got "real lax" about letting assistants scale

teeth. He stated he is "taking steps to make sure it does not happen again." He stated that the assistants use the cavitron on "heavily stained teeth" to remove stains. He stated that he does not allow assistants to permanently cement inlays and crowns but that "there have been times it happened." He replied "yes and no" when Fisher asked him if he allowed assistants to pack cord around patient's teeth. He stated he "has the assistants place the cord around teeth and tuck it in so it stays but he will finish packing it." He stated that he is "committed to make changes the Board thinks he should to move in the right direction."

10. Fisher also performed infection control inspections at Licensee's practice.
  - a. Fisher completed the first inspection report at the Nichols Road location on January 6, 2015. Fisher identified three deficiencies in the January 6 inspection: no copies of spore test records in violation of CDC Guideline VI(D-F), staffs' arms were not covered in violation of CDC Guideline IV(A-D) and VI(C) and trays in the operatory were not properly covered in violation of CDC Guideline VI(A) and VI(G). Licensee signed the January 6 inspection report acknowledging the violations. Investigator Fisher received the spore test records from Licensee's counsel on January 16, 2015. The results showed that the sterilizer was not spore tested for the weeks of November 23, December 21 and December 28, 2014.
  - b. During Fisher's January 22, 2015 visit to Licensee's practice, assistant BM stated that the practice corrected the violations from the January 6 inspection related to the arm covering and covering of instruments. Regarding the missing spore tests, BM stated that the office was closed the week of November 23, 2014 and they did not see any patients. She stated the other two weeks the office saw patients but was closed for the holidays on the days she was normally scheduled at the office and she is the only one that does testing. Therefore, she stated the testing was not done those two weeks.
  - c. On January 29, 2015, Investigator Fisher conducted an infection control inspection at Licensee's Independence location. Fisher identified one deficiency in the January 29 inspection: no copies of spore test records in violation of CDC Guideline VI(D-F). Staff provided Fisher with spore test results between June 30, 2014 and January 26, 2015. During that time frame, there were four weeks the equipment was not spore tested: August 3, 2014,

August 31, 2014, December 14, 2014 and January 18, 2015. BM stated that Licensee was off work for medical reasons for the week of January 18 and that is why that week was missed. She stated patients were seen for all the other dates and she did not know why there was no testing. One of Licensee's associate dentists signed the inspection report acknowledging the violation.

11. Licensee appeared before the Board at its October 2015 Board meeting. Licensee stated that he realized that he "needed to properly delegate and train" his staff. He stated he is having his dental assistants obtain expanded function certificates and is doing monthly training for spore testing. He stated that as his practice grew "training was not sufficient and gave rise to problems." He stated "as he got busier, the assistants would do some of the scaling of tartar that he missed." He admitted the assistants also previously used the cavitron. In addition to his appearance, Licensee also provided additional written responses and information related to the complaints. In a letter dated October 21, 2015 on behalf of Licensee, Licensee's counsel detailed the changes being made to the practice as a result of the complaints and board investigation. The letter also addressed the two complaints and included a letter from dental assistant BM in support of Licensee and his practice.

12. Section 191.694, RSMo, states, in relevant part:

1. All health care professionals and health care facilities shall adhere to universal precautions, as defined by the Centers for Disease Control of the United States Public Health Service, including the appropriate use of hand washing, protective barriers, and care of needles and other sharp instruments to minimize the risk of transmission of HIV, HBV and other blood-borne infections to patients. Health care professions and health care facilities shall comply with current guidelines, established by the Centers for Disease Control, for disinfection and sterilization of reusable devices used in invasive procedures.

13. Regulation 20 CSR 2110-2.120 states, in relevant part:

(2) A registered and currently licensed dentist may not delegate to a dental assistant or certified dental assistant, as defined in subsections (1)(B) and (C) respectively, the performance of the following procedures:

- (A) Diagnosis, including interpretation of dental radiographs and treatment planning;
- (B) Cutting of tooth structure;
- (C) Surgical procedures on hard and soft tissues including,

but not limited to, the removal of teeth and the cutting and suturing of soft tissues;  
(D) The prescription, injection and parenteral administration of drugs;  
(E) The final bending of archwire prior to ligation;  
(F) The scaling of teeth; and  
(G) Administration of nitrous oxide-oxygen analgesia except that a dental assistant or certified dental assistant may assist in the administration of and monitor nitrous oxide-oxygen analgesia with specific training as provided in section (3) of this rule.

...

(4) A currently licensed dentist may delegate, under direct supervision, functions listed in subsection (4)(D) of this rule to a certified dental assistant or a dental assistant subsequent to submission to the Missouri Dental Board of the following satisfactory proof of competence:

(A) After June 1, 1995, all certified dental assistants graduating from accredited dental assisting programs in Missouri will have competency testing for all functions listed in subsection (4)(D) of this rule and may be delegated those functions by a currently licensed dentist;

(B) Certified dental assistants graduating prior to June 1, 1995, or from programs outside Missouri, may be delegated the functions in subsection (4)(D) of this rule with proof of competence issued by their educational institutions and may be delegated other specific functions if they have completed an approved course, passed an approved competency examination, and can provide proof of competency as defined in subsection (1)(D);

(C) Dental assistants, as defined in subsection (1)(B), may be delegated any specific function listed in subsection (4)(D) of this rule if they have successfully completed a basic dental assisting skills mastery examination approved by the board, completed an approved course, passed an approved competency examination, and can provide proof of competence as defined in subsection (1)(D);

(D) Functions delegable upon successful completion of competency testing are—

1. Placement of post-extraction and sedative dressings;
2. Placing periodontal dressings;
3. Size stainless steel crowns;
4. Placing and condensing amalgam for Class I, V, and VI restorations;
5. Carving amalgam;
6. Placing composite for Class I, V, and VI restorations;
7. Polishing the coronal surfaces of teeth (air polisher);
8. Minor palliative care of dental emergencies (place sedative filling);
9. Preliminary bending of archwire;
10. Removal of orthodontic bands and bonds;
11. Final cementation of any permanent appliance or



prosthesis;

12. Minor palliative care of orthodontic emergencies (that is, bend/clip wire, remove broken appliance);

13. Making impressions for the fabrication of removable prosthesis;

14. Placement of temporary soft liners in a removable prosthesis;

15. Place retraction cord in preparation for fixed prosthodontic impressions;

16. Making impressions for the fabrication of fixed prosthesis;

17. Extra-oral adjustment of fixed prosthesis;

18. Extra-oral adjustment of removable prosthesis during and after insertion; and

19. Placement and cementation of orthodontic brackets and/or bands; and

(E) Upon request by the Missouri Dental Board, the licensed and supervising dentist must provide copies of proof of competence of dental auxiliaries.

(5) A currently licensed dentist may delegate under direct supervision to a dental assistant or certified dental assistant any functions not specifically referenced in sections (2)–(4) of this rule and not considered either the practice of dentistry or the practice of dental hygiene as defined in sections 332.071 and 332.091, RSMo, and 4 CSR 110-2.130.

(6) The licensed dentist is responsible for determining the appropriateness of delegation of any specific function based upon knowledge of the skills of the auxiliary, the needs of the patient, the requirements of the task and whether proof of the competence is required.

(7) Pursuant to section 332.031.2., RSMo, the dentist is ultimately responsible for patient care. Nothing contained in the authority given the dentist by this rule to delegate the performance of certain procedures shall in any way relieve the supervising dentist from liability to the patient for negligent performance by a dental assistant or certified dental assistant.

14. Licensee's actions as described above in paragraphs 3 through 11 constitute cause to discipline Licensee's dentist license.

15. Cause exists for the Board to take disciplinary action against Licensee's license under § 332.321.2(5), (6), (16) and (17), RSMo, which states in pertinent part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any permit or license required by this chapter or any person who has failed to renew or has surrendered his or her permit or license for any one or any combination of the following causes:

...

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of, or relating to one's ability to perform, the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or any lawful rule or regulation adopted pursuant to this chapter;

...

(16) Failure or refusal to properly guard against contagious, infectious or communicable diseases or the spread thereof;

(17) Failing to maintain his or her office or offices, laboratory, equipment and instruments in a safe and sanitary condition[.]

#### Joint Agreed Disciplinary Order

Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of § 621.045.3, RSMo:

16. The terms of discipline shall include that the dental license, license number 014573, be **CENSURED.**

17. The parties to this Agreement understand that the Missouri Dental Board will maintain this Agreement as an open record of the Board as provided in Chapters 332, 610 and 324, RSMo.

18. The terms of this settlement agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise provided herein, neither this settlement agreement nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

19. Licensee, together with his heirs and assigns, and his attorneys, do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to § 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters

raised in this case, its settlement, or from the negotiation or execution of this settlement agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this settlement agreement in that it survives in perpetuity even in the event that any court of law deems this settlement agreement or any portion thereof to be void or unenforceable.

20. If no contested case has been filed against Licensee, Licensee has the right, either at the time the settlement agreement is signed by all parties or within fifteen days thereafter, to submit the agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties to the settlement agreement constitute grounds for denying or disciplining the license of the licensee. If Licensee desires the Administrative Hearing Commission to review this Agreement, Licensee may submit this request to: Administrative Hearing Commission, Truman State Office Building, Room 640, 301 W. High Street, P.O. Box 1557, Jefferson City, Missouri 65101.

21. If Licensee has requested review, Licensee and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Licensee's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Licensee's license. Effective the date the Administrative Hearing Commission determines that the agreement sets forth cause for disciplining Licensee's license, the agreed upon discipline set forth herein shall go into effect. If Licensee does not request review, this Agreement shall become effective fifteen days after the Board's Executive Director signs the Agreement.

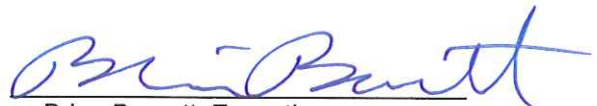
**LICENSEE**



Thomas L. Anderson, D.D.S.

Date 1-10-16

**BOARD**



Brian Barnett, Executive  
Director Missouri Dental  
Board

Date 1/15/2016